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Testimony of Robert B. Clark  
**ASSOCIATION**  
Consumer Law Section  
Commercial Law and Bankruptcy Section

**In OPPOSITION to**

**HB5343**  
**AN ACT CONCERNING COSTS INCURRED BY STATE RESIDENTS WHEN  
RESPONDING TO CERTAIN DISCOVERY REQUESTS**

Judiciary Committee  
March 5, 2014

My name is Robert Clark. I am here today **on behalf of the CT BAR ASSOCIATION** to voice its opposition to Raised Bill No. 5343, "*An Act Concerning Costs Incurred by State Residents When Responding to Certain Discovery Requests*" which imposes drastic new costs and expenses on a party seeking to obtain third-party discovery from a Connecticut resident.

I am the Chair of the Consumer Law Section of the Connecticut Bar Association and both my section and the Commercial Law and Bankruptcy Section of the CBA have individually come forward to oppose this bill.

This bill is harmful to consumers, as it imposes a significant deterrent to vindicating their rights in court.

Under Raised Bill No. 5343, a party seeking to take the deposition of a Connecticut resident would now be required to pay all of the deponent's costs incurred in complying with the deposition subpoena, including, among other costs, the deponent's attorney's fees. This is a radical departure from current law. Indeed, we are not aware of any jurisdiction that requires a party to pay a witness's costs and attorney's fees for responding to a deposition subpoena.

Connecticut's current requirement for compensating third-party witnesses is nearly the same as the requirement in our neighboring states, in other states throughout the country, and as reflected in the rules for federal courts. Specifically, third-party (i.e. non-party) witnesses are entitled only to a nominal fee for appearing for a deposition, as it has been commonly and historically

understood that appearing as a witness and testifying is a civic duty.

In addition, non-party witnesses are already protected from burdensome and oppressive discovery by existing Connecticut law. Under Connecticut General Statutes section 52-148e, the court may quash or modify a subpoena if it is unreasonable and oppressive, or the court may require the party requesting the subpoena to advance the reasonable cost of producing the requested materials.

By contrast, Raised Bill No. 5343 seemingly creates an absolute right for a witness to recover its costs and attorney's fees in responding to a subpoena, the amount of which may exceed the value of a consumer's case.

The effect of this bill will be to impose a drastic and unwarranted cost on consumers who are seeking to vindicate their rights in court; the imposition of this substantial expense will likely deter consumers from doing so.

We urge the Committee to vote against this bill.